

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By Senator Chet Blaylock, on March 18, 1991, at 3:00 P.M.

ROLL CALL

Members Present:

Chet Blaylock, Chairman (D)
Harry Fritz, Vice Chairman (D)
Robert Brown (R)
Bill Farrell (R)
H.W. Hammond (R)
Dennis Nathe (R)
Dick Pinsoneault (D)
Mignon Waterman (D)
Bill Yellowtail (D)

Members Excused: None

Staff Present: Andrea Merrill (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

Chairman Blaylock announced that in view of the fact Representative Dorothy Bradley had to leave for another hearing after her presentation of HB 407, the committee would have an opportunity to ask questions immediately following her opening statement.

HEARING ON HOUSE BILL 407

Presentation and Opening Statement by Sponsor:

Representative Dorothy Bradley, District 79, stated she believes this is a very important bill. It is the result of a key recommendation of the Interim Indian Study Committee to increase the membership on the Board of Regents to eight members and to require the appointment of one Native American member. What was originally looked at was a statutory proposal that would indicate that one of the seven Regents would be an Indian. Various entities, including the Governor, did not want to change statutory rules, so the obvious alternative seemed to be to add an eighth member. She corresponded with three Legislators who served on that Interim study, and they agreed that the eighth

member was the way to go. According to Ms. Bradley, it is particularly timely because at present there are more tribally controlled colleges in Montana than any other state in the country. All seven are fully accredited or are candidates for accreditation. She believes what they have accomplished in the last decade is an absolute success story. She discovered that not only are there 1700 Indian students attending these tribal colleges, but also over 300 non-Indian students attend those colleges as well. From those Indian graduates and transfers who will be coming out of these two-year colleges, it is hoped they will move into other units of the Montana University System. She believes their success story deserves more than compliments. She read some of the goals of higher education, as listed in the Regents Policy and Procedure Manual. She also cited population statistics indicating in 1950 there were only 350 Native American students in the high schools, while today there are 3000, which means that potentially Indian students could make up ten percent of the college population in a few years. The report of the Commission of Indian Affairs stated in the education category that "there is a new urgency in Indian country to improve educational opportunity for Indian children. Indian educators are hoping to make the 1990s a decade of Indian education achievement". A commitment such as this bill provides would mean that all educators, administrators, and legislators share that hope about what this decade should achieve.

Questions From Committee Members:

Senator Hammond referred to the statistics of the low number of Native Americans in high school in 1950, and added it was his belief a lot of students attended boarding school in other states. Rep. Bradley was not aware of that situation, but stated if that situation did exist, it would be more of a recommendation to provide an advance start where they can work in their community on a college education.

Senator Fritz asked who breaks a tie when the Board of Regents vote. Rep. Bradley referred the question to Representative Bea McCarthy who stated that it depends upon the Chair. The present Chairman of the Board of Regents chooses not to vote on a number of issues. With the eighth member added to the Board, this could be a problem at times if a tie vote occurred. Rep. Bradley stated it is her belief there is nothing negative about having an even number on the Board.

Senator Farrell pointed out that the law states a tie vote may be broken by the Governor.

Proponents' Testimony:

SHAWN GUN SHOWS, Montana Alliance for Progressive Policy, comprised of women, education, senior citizens, low income, Native Americans, labor and conservation groups, stated that they

represent over 60,000 Montana households. MAPP supports education development in the state of Montana by means of expanding the Board of Regents to include a Native American member. The population of Native Americans in Montana is increasing and so is their involvement in the state's overall curriculum. According to Gun Shows, Montana does have a strong Native American culture that deserves a rightful place in the state's education system. As a Native American student at the University of Montana, he feels it is time Montana's education system progressed to accommodate the needs of all Montanans. Therefore, he urged passage of HB 407.

BARBARA STIFFARM, representing the Montana Indian Education Association, advised that she wished to read testimony urging support of HB 407 prepared by her husband, LOREN 'BUM' STIFFARM, president of the Montana Indian Education Association, who was unable to attend the hearing on HB 407. Mr. Stiffarm is also Director of Tribal Education Programs of the Gros Ventre and Assiniboine Tribes of Fort Belknap. She presented copies of the testimony to committee members (Exhibit #1).

GAIL GRAY, Office of Public Instruction, advised that their office supports legislation calling for appointment of a Native American to the Board of Regents. Their rationale is based on Article 10, Section 1, of the Montana Constitution, entitled "Educational Goals and Duties" which says: "The state recognizes the distinct and unique cultural heritage of the American Indian and is committed in its educational goals to the preservation of their cultural integrity". This constitutional goal specifically identified as an educational goal for this state is not readily attainable without representation of an American Indian on the Board of Regents level. She urged support of HB 407.

JIM SMITH, representing Montana Residential Child Care Association, stated he would like to bring together two disparate lines of thinking, and added they come together very nicely in HB 407. He stated that American Indian people are very much over-represented on our public assistance case load. About 25% of all children in out-of-home care in the state are American Indians. This is also true of the AFDC case loads. The situation only increases as they move up the scale and refer to Mountain View and Pine Hills and the state prison at Deer Lodge. He informed that Julia Robinson, Director of SRS, stated that the greatest single predictor of success in life is education, with "success" meaning economic independence and self sufficiency, family stability and ability to get along well in this society. HB 407 would provide a role model for American Indian children in the person of a Regent, and that in itself would be an incentive for Indians to stay in school and succeed in school, and would have a positive effect on the number of public assistance cases. He urged support of HB 407.

BEA MCCARTHY, Representative of House District 66, advised that she is a former member of the Board of Regents, having

retired from that Board February 1, 1990. She stated she can only endorse this proposal. She found during her time on the Board of Regents that Indian education is not quite the same as the education of some other students. She served on the Tracks Program while on the Board. This Program seeks to find why Indian students drop out of school and how to keep them enrolled. It is her opinion it is one of the most worthwhile programs which has come through in a long time. Indian education in Montana is still not where it should be. She stated this constitutional amendment will give everyone an opportunity to make a decision on this issue. She asked for the committee's concurrence on HB 407.

WALTER C. FLEMING, Assistant Professor with the Center for Native American Studies at Montana State University, Bozeman, supplied written testimony setting forth background and statistical information regarding education of Indians in Montana (Exhibit #2). The testimony urged passage of HB 407.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Pinsoneault stated he has some concerns regarding implementation. He stated he would like to see some provision whereby membership would be rotated between tribes. If that is not feasible, then there should be some forum or group among the seven tribes who can get together and recommend one person to the Board of Regents. His other concern regarded women representation on the Board.

Jim Smith stated it is his understanding that the Tribal Councils get together and recommend a single person to the Governor for the position of Native American Coordinator on the Governor's staff. He suggested that the same mechanism could be used in this regard.

Senator Nathe stated that he did not think rotation between the tribes would be necessary if one well qualified individual was recommended by the seven tribes.

Senator Waterman added that the Governor, through his selection process, could choose someone and would be sensitive to the fact that an individual should not be chosen from the same tribe time after time.

Senator Pinsoneault informed that he sat on the Select Committee on Indian Affairs for about four years, and he knows a little bit about tribal policies. He would hope that in the selection process perhaps three names would be submitted and one would be a woman. From his experience, he knows Tribal Councils are not particularly pro equal opportunity. Senator Blaylock informed that the Crow nation is now led by a woman.

Senator Nathe referred to the most recent fracas that developed over the appointment of the Indian Affairs Coordinator wherein a very well-qualified individual who was not from one of the seven tribes was selected. Senator Farrell confirmed there is a selection process for Indians Affairs Coordinator and is in statute on how it should be handled. There is no such statute pertaining to the Board of Regents selection process - it would be up to the Governor to select a Native American.

Senator Yellowtail stated that if there is one area of mutual concern among all the tribes in Montana, it is education. He thinks the work and cohesiveness of the Montana Indian Education Association certainly is testimony to that. He urged the committee to leave this bill as wide open as possible. He also pointed out that Tom Thompson, a member of the Blackfeet Tribe, who has served with distinction on the Board of Public Education for many years, has never been the object of jealousy by other tribes.

Chairman Blaylock added that perhaps there will be some dissension between the tribes in the future, but it is up to the Governor whom he chooses.

Senator Gage gave some background information and informed that the Governor indicated he would prefer to create another position on the Board of Regents, and have the constitution specify that person as a Native American.

Chairman Blaylock commented that one of the best statements he ever heard as to why so many Indians are in trouble in Montana was stated by a leader of the American Indian Movement who stood before a Native American audience and held up a bottle of booze and said "this is the way the white man keeps you in your place".

Closing by Sponsor:

Representative Bradley had to appear before another committee hearing so made no closing statement. Senator Gage urged passage of HB 407.

EXECUTIVE ACTION ON HOUSE BILL 407

Recommendation and Vote:

Senator Hammond made a motion that HB 407 BE CONCURRED IN. Those in favor - 9; opposed - 0. MOTION CARRIED.

Senator Gage will carry HB 407 to the floor of the Senate.

HEARING ON HOUSE BILL 470

Presentation and Opening Statement by Sponsor:

Representative Bea McCarthy, House District 66, advised that House Bill 470 provides protection of tenure when districts consolidate or annex. She stated she is carrying the bill for MFT and MEA. According to Ms. McCarthy, it clears up an area of law that needs clarification; it clarifies the tenure status of teachers when the district consolidates or is annexed into another district. Under current law when this happens, teachers who were tenured in the old district and continue to work for the new district, lose their tenure status. As a result, a teacher can work continuously in a classroom for 20 years, but when consolidation takes place, will lose his/her tenure. Without tenure protection the salary could be reduced, the teacher loses just cause and due process, and once again they are in a probationary situation just like a beginning teacher. It is designed to protect these teachers. The bill will facilitate appropriate annexations and consolidation because it will ease the mind of the teachers who are often the moving force behind consolidation. Unless teachers can protect their tenure, they have every reason to oppose this consolidation or annexation. The House voiced some concerns, and the bill does not clear up every area of controversy in consolidation or annexation law. It is intended only to address one area and that is the status of the employee in the newly consolidated or annexed district. She urged the committee to give a do pass recommendation.

Proponents' Testimony:

TERRY MINOW, representing the Montana Federation of Teachers, advised that the MFT strongly supports HB 470. That group, together with the MEA, requested that this bill be brought before the Legislature. She stated she wished to explain how the issue was brought to their attention. When Clyde Park and Wilsall consolidated in 1990, MFT represented the teachers in Clyde Park. Understandably, there was a great deal of consternation among the teachers as to what would happen to their job status. Although the Clyde Park School Board initially indicated that they desired to continue the tenure status for the teachers who were rehired, when the School Board checked with MSBA, they were told that tenure is defined by statute and that a local school board cannot expand that definition. Another case involved a special education co-op in the Bitterroot Valley which was consolidated with Corvallis School District. The School Board wanted to grant these teachers tenure status, but were told they could not. Regardless of whether or not the MSBA is correct in its assessment, there is definitely a need to clarify the tenure rights of teachers when a district consolidates. She advised that in the House they seemed to be more concerned with what the bill does not do than with what the bill does do. She agreed that there are many questions about annexation and consolidation, but they hope there will be a comprehensive bill before the Legislature next session to address those issues. HB 470 is designed to address a very important issue - the status of

the teachers in a new district. Under this bill, tenured teachers will maintain their non-probationary status, their salary protection, their rights to re-selection by May 1, and their rights to due process in case of termination. The salary protection is fair and justified, according to Ms. Minow, along with all the other tenure protections. It will make salary negotiations in a new district complicated, but it is her belief that will be as much a problem for the union as for the new school board. The purpose of consolidation or annexation should not be to cut long-time teachers' salaries, nor should the purpose be to get rid of tenured teachers. The new school board will receive a substantial bonus payment of \$450.00 per pupil for three years in the First and Second Class Districts, and \$750.00 per pupil in Third Class Districts for consolidating areas. If the tenured teacher is not doing his/her job, the statutes allow school boards to terminate the teacher for just cause. This bill will not affect the school board's responsibility and right. Ideally, consolidation and annexation take place because they are appropriate methods of cutting the cost of education while improving the quality of education provided to the students. School boards should support bills designed to facilitate appropriate consolidations and annexations. HB 470 also provides a hiring preference for non-certified, non-probationary employees and provides that those employees who are rehired will remain non-probationary employees. It clarifies a section of law that has been interpreted very differently by different organizations and school boards in the last several years. She urged support of HB 470.

PHIL CAMPBELL, Montana Education Association, advised that their association supports HB 470. He advised that a problem exists regarding the status of teachers following consolidation or annexation. It was his opinion that one of the reasons MSBA might have a problem with this bill is that consolidation is a way of cutting budgets and they feel they should be allowed to place teachers on a new salary schedule. It is his contention that cutting budgets is not the only reason schools consolidate. He also referred to the additional money the districts receive for a three-year period following consolidation. He urged support of HB 470.

KAY McKENNA, Montana Association of County Superintendents, stated their group is in support of HB 470.

Opponents' Testimony:

BRUCE MOERER, Montana School Boards Association, advised that he wished to hand out a proposed amendment (Exhibit #3). He advised that the proposed amendment does preserve tenure following consolidation or annexation. He added that tenure is a complicated and technical area and several things happen with tenure through consolidation. Some of the changes in the bill

resulted through discussion with the MEA and the MFT in the House. He stated it is important to distinguish between a consolidation and an annexation. The MSBA is opposed to the bill as written; however, they are not opposed to continuing tenure, and the proposed amendments clarify what needs to be done when salaries must be adjusted down. The amendments treat consolidation and annexation a little differently because there may not be a vacancy when a district is annexed into a larger district. He requested that the amendments be given consideration.

CHARLES ERDMANN, representing Montana Rural Education Association, advised that he wished to distribute two handouts (1) a copy of Section 20-4-203 which is the Montana tenure statute (Exhibit #4), and (2) the County Superintendent decision that brought this bill to the forefront (Exhibit #5). He stated his association is comprised of mainly rural school districts, and they think consolidation of school districts in Montana is inevitable. What they do not want to see is something that can be viewed as a deterrent to consolidation, and in his opinion the bill, as written, may be viewed by some districts as doing that. He also stated they do not disagree with the concept that if a teacher is rehired by a newly created consolidated district, that their tenure protection should continue. He stated he was involved with the Clyde Park - Wilsall situation, so he can speak to that. They felt, and the statutes bore them out, that when the two districts cease to exist, that if they did not take termination action prior to the May deadline, that the cases from other states indicated that tenure protection would continue on. One of the reasons Clyde Park - Wilsall were looking at this was to avoid duplication. The consolidation was more of an economic decision that both school boards brought to the attention of the community. They did not need the same number of teachers when they consolidated as when they were operating separately. They went ahead and terminated all the teachers in both districts and everyone was aware that tenure protection would be lost. The district was then going to hire back teachers for the positions that needed to be filled. As it happened there, about four teachers went other places and they were able to hire the remainder back. In a consolidation situation, two different salary schedules must be merged. If salary protection is to be continued, since the salary of a tenured teacher cannot be reduced, then that becomes the floor and automatically the costs will increase to get up to that floor. In the Shields Valley case they merged it in the middle. Some teachers lost a little and some gained a little. If that flexibility was not allowed, then districts would find their base would be the highest salary being paid in both districts. He stated he is a little concerned with the language in the bill, addressing Page 1, line 16. One of the problems he sees is that the tenure statute is not mentioned in HB 470, and right now this is the statute that defines tenure. He feels this will add a lot of confusion, and the bill needs work because it raises many questions.

Questions From Committee Members:

Chairman Blaylock asked that if two school districts go together and they have duplicate faculty, can they have a RIF and let the teacher with the lesser experience go. Phil Campbell, MEA, responded by stating that this bill will not solve all the problems regarding consolidation. The situation mentioned by Chairman Blaylock is one of the situations they hope will be addressed in a more comprehensive bill down the road.

Representative Bea McCarthy advised that in the discussion in the House it was stated that where two separate districts are going into a new district, the new district will hire the necessary faculty from each of the two districts, giving preference to the older teacher. The teachers would have tenure with the new district, but all of the teachers would not be hired. She also emphasized that is the way it was discussed on the floor of the House. Chairman Blaylock asked who actually said that is the way it is. She responded by stating that is the way she understood the bill. It is a protection of tenure, it does not address the issue of who is doing the consolidation. Consolidation and RIF are currently covered in statute.

Senator Hammond asked what about the people who are not hired back, to which Rep. McCarthy stated they have lost their tenure. The law says that the teachers who are hired back continue with their tenure. The new bill does not address the teachers who are not hired back.

Senator Pinsoneault stated he has no problem with tenure. He pointed out that 20-4-203 is very explicit in stating that the teacher is not only tenured, but would carry the same salary. He asked if that was intended, to which Rep. McCarthy stated that certainly it was intended.

Chairman Blaylock referred to an newspaper article pertaining to a mill levy in Billings which, if not passed, will mean that there will have to be a RIF of about a hundred teachers, which will be done on the basis of seniority. He commented that if two districts consolidate, and a duplication of teachers exists, it would seem to him that the Board should have the prerogative of laying off unnecessary teachers. Rep. McCarthy stated she was involved in a school district that went through a very drastic RIF. Teachers were hired on a seniority basis, and could "bump" into other grades if their grade level was filled and they were certified and qualified.

Chairman Blaylock commented that if the School District had to pay more for that tenured teacher that they do keep, there is considerable extra money available through the incentive pay. Ms. McCarthy stated she believes that is the purpose of the incentive pay - to keep the teachers at least at the salary they were receiving prior to consolidation.

Senator Hammond expressed concern that this creates a problem since one school might have a higher salary schedule than the other, which would result in teachers doing the same thing at two different salaries. Rep. McCarthy stated that might happen the first year. It would probably have to be a negotiated agreement between the new school district and the teachers.

Closing by Sponsor:

Representative McCarthy stated that she opposes the amendments since she feels the bill is sufficient in itself. It passed the House by 97 votes after a thorough discussion and hearing.

HEARING ON HOUSE BILL 665

Presentation and Opening Statement by Sponsor:

Representative Beverly Barnhart, District 80, advised that HB 665 is an act which requires school districts in certain areas to implement earthquake drill plans and those in Zone 3 to implement emergency plan drills.

Proponents' Testimony:

MARY ARNOLD, Disaster Emergency Service, presented a map illustrating where the seismic risk zones are located in Montana (Exhibit #6). Montana is a risk zone for earthquakes, being the fourth most seismically active state in the union. The provisions of the bill allow for earthquake plans and procedures in seismic zone 3, and include protective measures to be taken by students and staff in those areas. It provides for four earthquake drills during the school year. The plan and procedures include information and instructions for implementing those protective measures; it includes information on actions to make the schools safer, including measures that will reduce the risk to the students. It provides for necessary procedures for releasing students after an earthquake, and evacuation procedures. The provisions of this bill also provide for training students, teachers and school staff, and prior to drills tells them what is involved in drills. They must be told often enough so that they know automatically what to do should an earthquake occur. Disaster and Emergency Services will be working with the Office of Public Instruction to provide the planning and information on protective measures needed, and to offer assistance in implementing earthquake plans and procedures. She stated this is pro-active legislation that can save the lives of school children. This planning and training should be available to all children in the state.

BILL GOOD, Acting Administrator of the Disaster Emergency Services, stated he strongly endorses HB 665. According to Mr.

Good, approval of HB 665 will ensure implementation of a significant portion of the overall state earthquake fairness program that they are trying to get started - primarily public information for the protection of all people.

KAY MCKENNA, Montana Association of County Superintendents, advised that their group supports HB 665. She stated that in most cases there are County Coordinators for this program, adding that she, personally, has been through the training. She informed that a simulated earthquake drill points out how important this training is. She urged support of HB 665.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Farrell asked why a state statute was necessary to enforce earthquake drills. Ms. Arnold stated that it was not that school districts are refusing to do it, it is that they need encouragement to do this in addition to fire drills. Senator Farrell asked if some school districts have refused to do it. Ms. Arnold stated that some have earthquake drills in their policy but they actually do not hold them. The districts are supportive, but need some help on how to do it.

Chairman Blaylock asked what this legislation will do that cannot be done at the present time. Rep. Barnhart replied that the Disaster Team is going to prepare pamphlets that will be distributed to those areas. Zones 1 and 2 just need additional information, while Zone 3 needs to have a plan implementing a drill. Senator Blaylock asked if they do not go through earthquake drills at the present time in Zone 3. Rep. Barnhart stated that some districts do have the complete drill; others do not.

Senator Waterman asked if there is now a requirement in statute for fire drills to which Rep. Barnhart replied affirmatively. She added that fire drills are different from earthquake drills.

Senator Hammond asked if the plans are all worked out for earthquake drills. She stated that several schools are now holding earthquake drills, and the entire school takes part at one time.

Closing by Sponsor:

Representative Barnhart urged a do pass on HB 665.

HEARING ON HOUSE BILL 715Presentation and Opening Statement by Sponsor:

Representative Ray Peck, District 15, advised that he is the chief sponsor of House Bill 715, which was requested by the Superintendent of Public Instruction. He advised that it is strictly technical, and he requested Kathy Fabiano of the Office of Public Instruction to explain the bill.

Proponents' Testimony:

KATHY FABIANO, Office of Public Instruction, stated that the Legislative special session last year required school districts to adopt generally revised accounting principles, and since that time their office has been working with districts providing training and writing an accounting manual. As part of that process, they reviewed existing statutes dealing with school district accounting and they came across several sections of law where the current language is either contrary to the act, outdated or is not clear regarding intent. This bill takes those sections of law and attempts to correct or clarify the intent. Since a variety of subjects are being dealt with, she stated she wished to take the committee through quickly, section by section, and explain the amendments.

Section 1. The first amendment clarifies that school districts do not fund their insurance, either premiums or self-insurance funds, with a separate tax levy. Rather, districts insurance is funded from the General Fund and the Transportation Fund.

Section 2. The amendment in this section clarifies that districts may either purchase coverage or self-insure for liability, group health and life insurance. It also clarifies that insurance may be purchased with the Transportation Fund. If self-insured, the amendment requires activities to be accounted for in an internal service fund.

Section 3. The amendment in this section allows proceeds from the sale of real or personal property of the school district to be deposited in funds other than just the debt service fund, building or general funds, since those funds are not always the appropriate funds to receive the proceeds, depending on the property being sold.

Section 4. The proposed amendment will allow special education cooperatives to establish the same funds that the school districts currently use to account for the retirement, miscellaneous programs, and transportation activities. A separate cooperative retirement fund will prevent revenues and expenditures related to special ed cooperatives from being duplicated when they are reported to OPI. A separate

cooperative retirement will also allow for easier accounting and calculation.

Section 5. The amendment in this section is an accounting change allowing districts to deposit state and federal grants received for adult education in a fund separate from the fund used to account for adult education revenues. Federal and state grants will be accounted for in the miscellaneous programs fund.

Section 6. This amendment also deals with adult education. Districts can have either an adult basic education program offering courses that lead to a high school diploma, and they can have an adult education program which includes courses like quilting and basket weaving. Both programs are accounted for in the same fund. Current statutory language regarding this fund's reserve limits speaks only to the adult basic education portion. The reserve should be a percentage of the total fund budget to make the calculation of the reserve easier and to be consistent with other laws that deal with reserve limits.

Section 7. Current law controls district budgets at the fund level, but requires clerks to do budget transfers before year end to eliminate any line item budget overdrafts within that fund. This amendment clarifies that a school district may spend more than the amount budgeted for a particular line item within a fund, provided the total budget for a fund is not overextended. As amended, adjustments of the budget within a fund to eliminate line item overdrafts would be optional rather than mandatory.

Section 8. The amendment in this section adds three non-budgeted funds to the list of those authorized in the statute. Districts have used these three funds for the past several years with the OPI's approval.

Section 9. This amendment clarifies that the proceeds of bonds that are issued to pay a judgement against the district would be deposited in a fund established especially for that purpose rather than in the building fund, as current language reads.

Section 10. This amendment would allow districts to calculate their liability for accumulated sick leave once a year on June 30, rather than twice a year. Current law requires the district to calculate the liability on January 15 for purposes of establishing the reserve, and then they must calculate the liability again on June 30 for financial reporting purposes.

Section 11. This amendment is a clarification requested by the County Superintendents. Districts are allowed to establish a reserve fund for purposes of replacing buses and two-way radios. Current law allows the district to levy and add to the reserve each year in an amount that does not exceed 20% of the original cost of the bus or radio. The amendment clarifies that the sum of the annual amount added to the reserve to replace a particular

bus or radio cannot exceed 150% times the original cost of the bus.

KAY McKENNA, Montana Association of County Superintendents, advised that her group supports HB 715, and they feel comfortable with the changes.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Nathe asked if a coordination clause on page 5, line 17 through 21, is necessary. Senator Waterman said a bill is on the Governor's desk that allows special education co-ops to be full service co-ops. Ms. Fabiano advised that if the bill in question restricts the funds that the full service co-ops can use, it would probably need a coordination clause. She advised she would check into the matter, and Chairman Blaylock also requested Andrea Merrill, Legal Counsel to research the matter.

In response to a question by Senator Hammond regarding the three additional funds, Ms. Fabiano responded that there are no funds being added that districts are not already using. They are adding names.

Referring to Section 8, page 10, Ms. Fabiano advised that those are also funds that are currently being used by the district with the OPI's approval.

Senator Farrell asked why the bus appreciation was raised to 150%. Representative Peck said that during discussion it was noted that cost of buses was increasing so rapidly that the previous appreciation did not cover the cost. Senator Farrell referred to the bill which allowed for re-built buses. Rep. Peck said the districts could take that option.

Senator Nathe asked if the term "funds" can be used interchangeably with "reserves" or must the type of reserve be specified. Ms. Fabiano stated there is a difference in accounting terminology between a "reserve" and a "fund". She believes it is unfortunate that they named this "fund" a "reserve fund" because normally within a fund, you reserve a portion of that fund's balance. In this case the entire fund is reserved for replacement. Senator Nathe asked how are monies in a reserve carried over in July. Ms. Fabiano informed that within a fund, there is a balance at the end of the year. A portion of that balance is reserved, and the other portion is reappropriated. Senator Nathe asked if there is a limit on how large the reserves can be built up, to which Ms. Fabiano replied that if it is a non-budgeted fund, she did not believe there was a limit on the reserves.

In reply to a question by Senator Hammond, Ms. Fabiano advised that back taxes, when they are collected, are distributed to the same funds that they would have been distributed to had they been paid on time.

Senator Nathe said that if a school district had several hundred thousand dollars in back taxes paid to it now, how would that be handled. Ms. Fabiano stated if districts get revenue from delinquent protested taxes prior to July 1, they could reserve those monies over and above the other reserve cap. Senate Bill 17 addresses the spending of those monies in emergency budget situations.


Chairman Blaylock asked if everything in HB 715 complies with the gap principles. Ms. Fabiano answered affirmatively.


Closing by Sponsor:

Representative Peck stated he believes this is a technical accounting type bill, and he urged support of HB 715.

ADJOURNMENT

Adjournment At: 6:00 P.M.


CHET BLAYLOCK, Chairman


BETSY CLARK, Secretary

CB/bc

MONTANA INDIAN EDUCATION ASSOCIATION

BOX 848

HARLEM, MONTANA 59526



"The future of Indian people rests
with the education of their young."

TESTIMONY

TO THE

STATE OF MONTANA

SENATE EDUCATION COMMITTEE

on

HOUSE BILL 407

March 18, 1991

by

LOREN 'BUM' STIFFARM, PRESIDENT

MONTANA INDIAN EDUCATION ASSOCIATION

SENATE AGRICULTURE

EXHIBIT NO. #1

DATE 3/18/91

BILL NO. HB 407

GOOD AFTERNOON MR. CHAIRMAN AND MEMBERS OF THIS DISTINGUISHED COMMITTEE. MY NAME IS BUM STIFFARM. I AM THE DIRECTOR OF TRIBAL EDUCATION PROGRAMS OF THE GROS VENTRE AND ARSINIBOINE TRIBES OF FORT BELKNAP AND CURRENTLY SERVE AS THE PRESIDENT OF THE MONTANA INDIAN EDUCATION ASSOCIATION AND 1ST VICE PRESIDENT OF THE NATIONAL INDIAN EDUCATION ASSOCIATION.

I AM BEFORE YOU TODAY TO SPEAK IN SUPPORT OF HOUSE BILL NO. 407. THE BILL TO SPONSOR LEGISLATION MAKING AN APPOINTMENT OF AN INDIAN PERSON TO THE BOARD OF REGENTS. AS YOU ALL KNOW THE BOARD OF REGENTS GOVERN THE UNIVERSITY SYSTEM HERE IN MONTANA.

YOU WILL HERE SOME EXCELLENT TESTIMONY HEAR TODAY FOR REASONS WHY WE FEEL VERY STRONGLY THAT AN INDIAN PERSON BE APPOINTED TO THIS PRESTIGIOUS BOARD.

EACH OF THE SEVEN RESERVATIONS HERE IN MONTANA HAVE A TRIBALLY CONTROLLED COMMUNITY COLLEGE. MANY HAVE BEEN IN EXISTENCE FOR TEN YEARS OR LONGER. EACH COLLEGE IS GOVERNED BY A BOARD OF DIRECTORS OR COLLEGE BOARD THAT OVERSEES THE ADMINISTRATION AND DEVELOPMENT OF THESE RESPECTIVE COLLEGES. INDIAN PEOPLE THAT ARE SEATED ON THESE BOARDS TAKE THESE POSITIONS VERY SERIOUSLY AND MANY INDIVIDUALS HAVE DEDICATED THEIR LIVES TO THE SUCCESS OF THESE COLLEGES. FROM THAT WE HAVE GAINED THE EXPERTISE AND ABILITIES SO NECESSARY FOR THE SUCCESS OF THESE COLLEGES. OUR COLLEGES ARE GROWING AND DEVELOPING TO THE OUTMOST IN FACILITIES AND CURRICULUM THAT WOULD SUPRISE MOST.

Ex. 1
3-18-91
HE 407

INDEED, SO TOO HAVE OUR PEOPLE. WE HAVE GAINED THE NECESSARY EXPERIENCE IN THE FIELD OF HIGHER EDUCATION THAT SHOULD ENABLE MANY OF US TO SERVE AS MEMBERS OF THE BOARD OR REGENTS.

TO THIS VERY DAY, NOT ONE INDIAN PERSON HAS EVER SERVED ON THE BOARD OF REGENTS FOR THE STATE OF MONTANA. IT IS ALWAYS THE SAME ANSWER. YOUR APPLICANTS DID NOT MEET THE QUALIFICATIONS. NO ONE HAS EVER PRESENTED INFORMATION TO US OUTLINING THE CRITERIA FOR INDIVIDUALS TO SERVE ON THIS BOARD.

MOST INDIAN TRIBES IN THE STATE NOW CONTRACT THE HIGHER EDUCATION PROGRAMS FROM THE BUREAU OF INDIAN AFFAIRS UNDER P.L. 93-638 THAT PROVIDES SCHOLARSHIP FUNDS FOR SOME INDIAN STUDENTS TO ATTEND SCHOOLS IN THE UNIVERSITY SYSTEM AND AT TRIBAL COLLEGES. WE WORK EVERYDAY WITH THE UNIVERSITY SYSTEM PERSONNEL IN FINANCIAL AID, HOUSING, ADVISORS AND EVEN COLLEGE PRESIDENTS. WE KNOW THE PROBLEMS AND SUCCESSES OF THE STUDENTS. WE PROBABLY KNOW THE UNIVERSITY SYSTEM BETTER THAN MOST.

WITHIN THE STATE OF MONTANA, OF ALL INCOMING FRESHMAN THAT ARE INDIANS MAKE UP 16% OF THE STUDENT POPULATION. WE AS INDIAN PEOPLE WHO LIVE ON THE RESERVATIONS ARE ALWAYS TELLING OUR YOUNG STUDENTS TO GO ON TO COLLEGE AND GET AN EDUCATION. COME BACK HOME AND TEACH YOUR YOUNGER BROTHERS AND SISTERS. BE A ROLE MODEL AND SHOW THEM IT CAN BE DONE.

EXCELLENT ROLE MODELS AND PROFESSIONAL EDUCATORS ARE ON A RISE HERE IN MONTANA. THERE ARE MANY EXCELLENT PEOPLE WHO WOULD MAKE EXCEPTIONAL MEMBERS OF THE BOARD OF REGENTS.

JUST SINCE 1978 THERE HAVE BEEN SEVEN (7) INDIVIDUALS SELECTED AS
'NATIONAL INDIAN EDUCATORS OF THE YEAR'. LET ME PROVIDE YOU WITH
THEIR NAMES.

1. DR. ROBERT J. SWAN, ASST. SUPT. AT ROCKY BOY

FORMER NATIONAL INDIAN EDUCATION ASSN. PRESIDENT

2. DR. MURTON, MC CLUSKEY, FORMER TITLE V DIRECTOR

GT FALLS PUBLIC SCHOOLS

3. DR. MIKE DOSS, FORMER DIRECTOR OF THE NATIONAL ADVISORY

COUNCIL ON INDIAN EDUCATION, WASHINGTON, DC

4. TOM THOMPSON, FORMER SUPT. OF BROWNING PUBLIC SCHOOLS

MEMBER OF BOARD OF PUBLIC EDUCATION

5. LARRY LA COUNTE, SUPT. OF SCHOOLS IN HAYS LODGE POLE,

LODGE GRASS, ARLEE AND FORMER PRES. OF MONTANA IMPACT AID ASSN

6. DR. JOE MC DONALD, FORMER COLLEGES INSTRUCTOR AT N M C, AND

CURRENT PRESIDENT OF SALISH-KOOTENAI COMMUNITY COLLEGE

7. DR. JANINE PEASE WINDY BOY, PRESIDENT OF LITTLE BIG HORN

COLLEGE, MEMBER OF INDIAN NATIONS AT RISK TASK FORCE, US DEPT
OF EDUCATION, WASHINGTON, DC

ALL OF THESE INDIVIDUALS WOULD MAKE EXCELLENT MEMBERS OF THIS BOARD.

HOWEVER, I MUST PROVIDE WITH YOU NO FINER OF AN EXAMPLE OF OUR NOMINEE
OF TWO YEARS AGO.

Ex. 1
3-18-91
HB 407

TWO YEARS AGO WE SUBMITTED A NAME OF AN INDIVIDUAL THAT WE THOUGHT WOULD MEET THE 'UNWRITTEN' CRITERIA FOR THE BOARD. WE SUBMITTED MR. ED PARISIAN'S NAME FOR CONSIDERATION. AFTERALL, ED WAS THEN THE SUPERINTENDENT OF SCHOOLS AT ROCKY BOY. HE ALSO ADMINISTERED THE HIGHTER EDUCATION PROGRAM WHILE SERVING AS TRIBAL EDUCATION DIRECTOR AT ROCKY BOY. HE WAS JUST FINISHING UP HIS SECOND TERM AS THE PRESIDENT OF THE NATIONAL INDIAN EDUCATION ASSOCIATION. THE LARGEST INDIAN ORGANIZATION IN THE UNITED STATES.

UNFORTUNATELY, AND FOR REASONS STILL NOT EXPLAINED TO US, ED WAS NOT SELECTED. A FEW MONTHS LATER, THE HONORABLE UNITED STATES SECRETARY OF INTERIOR, MANUAL LUJAN ASKED ED TO LEAD THE DEPARTMENT OF EDUCATION PROGRAMS WITHIN THE BUREAU OF INDIAN AFFAIRS FOR THE 'ENTIRE UNITED STATES'.

SOMETHING IS WRONG HERE. SOMETHING IS DEFINITELY WRONG HERE.

ED WAS NOT QUALIFIED ENOUGH TO BE SEATED ON THE MONTANA STATE BOARD OF REGENTS BUT YET HAD THE NECESSARY QUALIFICATIONS FOR SUCH A PRESTIGIOUS SEAT WITHIN THE DEPARTMENT OF INTERIOR IN WASHINGTON, D.C.

OUR EXAMPLES CAN GO ON AN ON. JUST THIS YEAR WE SUBMITTED A LIST OF INDIVIDUALS THAT WE FELT WOULD BE QUALIFIED FOR THIS BOARD. DR. JANINE PEASE WINDY BOY, MS. DONNA BUCKLES OF FORT PECK AND DON WETZEL OF HARLEM, FORMER STATE COORDINATOR OF INDIAN AFFAIRS. AGAIN, NO ONE WAS SELECTED.

TIMES MUST CHANGE AND YOU CAN BE A FACTOR IN THAT CHANGE. WE HAVE THE INDIVIDUALS AND THESE INDIVIDUALS HAVE THE EXPERTISE NECESSARY TO MAKE

BUT THEY WOULD BE A POSITIVE VOICE FOR THE FIELD OF HIGHER EDUCATION
FOR ALL MONTANANS.

THANK YOU AND WE APPRECIATE YOUR SUPPORT FOR HOUSE BILL NO. 407.

**MONTANA
STATE
UNIVERSITY**

1893-CENTENNIAL-1993

Office of the
Vice President for Research

207 Montana Hall
Montana State University
Bozeman, Montana 59717-0246

SENATE AGRICULTURE
#2

EXHIBIT NO.

DATE

BILL NO.

3/18/91

HB 407

TELEFAX COMMUNICATION

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FROM:

Date

Name/Department

Responsibility Center #

Senate Education Committee

Rm 439

Helena Montana

444-4105

Telephone #

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3/18/91

Center for Native American Studies

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Ex. 2
3-18-91
HB 407

TESTIMONY BEFORE THE SENATE EDUCATION COMMITTEE
IN SUPPORT OF HB # 407

My name is Walter C. Fleming and I am an adjunct Assistant Professor with the Center for Native American Studies at Montana State University, Bozeman, Montana. It is my pleasure to appear before you in support of House Bill No. 407, "A Bill for an Act entitled: An Act to submit to the qualified electorate of Montana an amendment to Article X, Section 9, of the Montana Constitution to increase the membership on the Board of Regents to eight members and to require the appointment of one Native American member."

Introduction

In 1970, Montana's Constitution was amended to include a provision in recognition of its American Indian citizens:

The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity (Article X, Section 1(2)).

Pursuant to meeting that high ideal, on September 13, 1990, the Montana Board of Regents of Higher Education approved a Board Policy for inclusion into the Policy and Procedure Manual the following policy:

The Board of Regents recognizes the desirability for campus environments to promote multicultural diversity and for the participation and achievement of American Indian and other minority students to be, at a minimum, equal to their representation in the state's population. To that end, the Board pledges its cooperation with the Board of Public Education, and Office of Public Instruction, American Indian tribal colleges, and other American Indian and minority entities within the State and adopts the following goals for higher education in Montana:

1. To enroll and graduate American Indians and other minorities in proportion to their representation in the state's population. ...

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Testimony - HB No. 407
Walter C. Fleming
page two

2. To increase the employment of American Indians and other underrepresented minorities in administrative, faculty and staff positions to achieve representation equal to that of the relevant labor force.
3. To enhance the overall curriculum by infusion of content which enhances multicultural awareness and understanding.¹

The Board adopted ten guidelines based upon recommendations from the National Center for Postsecondary Governance and Finance as its guiding philosophy for achieving the commendable (and very attainable) goals it adopted. Among the ten is the pledge to "[e]mploy American Indian and other Minority Leaders."

Employing American Indian and other minorities in positions of senior leadership sends a clear message about the importance and value of cultural diversity among professional institutional staff.²

In Montana, there is no more senior leadership position within higher education than service on the Board of Regents of Higher Education. The Commission on Minority Participation in Education and American Life observed that "the higher education community historically has acted as an important goad to the nation's conscience, calling the citizenry to higher standards of intellectual achievement and social justice."³ With the passage of House Bill No. 407, we can take one more step to improving American Indian higher education into the next century.

¹ Montana Board of Regents of Higher Education, Policy and Procedures Manual, Section: 1902, "Minority Achievement; Montana University System," (Effective September 13, 1990 and Issued December 26, 1990), p. 1902 (1 of 4).

² Montana Board of Regents of Higher Education, Policy and Procedures Manual, op cit., p. 1902 (2 of 4).

³ One-Third of a Nation, A Report of the Commission on Minority Participation in Education and American Life, American Council on Education and the Education Commission of the States, May 1988, p. 22.

3-12-91

HB 407

Testimony - HB No. 407
Walter C. Fleming
page three

Statistical Profile:

It may be helpful to keep in mind the following observations:

- * According to the preliminary 1990 Census data, the American Indian population of the state of Montana is approximately 50,000 or 6 % of the total Montana population.
- * There has been a 27 % increase in the state's Indian population since 1980.
- * The medium age of Montana American Indians is 19 years. The medium age for non-Indians is 29 years.
- * American Indians comprise 9.2 % of all Montana students from Kindergarten through high school.⁴

This data suggests that there is the potential for a significant increase in the postsecondary enrollment of American Indians for the next twelve years (the Montana high school graduating class for the year 2004 should comprise 10.8 % American Indians).

However, American Indians are not yet represented in higher education in proportion to their population. Consider:

- * For AY 1986-87, American Indian enrollment was only 2.5 % (or 768 students) of total enrollment at baccalaureate-granting units of the Montana University System.⁵
- * To achieve a minimum parity of 6 % enrollment, American Indian registration into System 4-year units would have to rise from 768 students to 1,840 students.

⁴ Office of Public Instruction, "Racial/Ethnic Origin Totals by Grade - January 1990," August 3, 1990.

⁵ This data and that which immediately follows is from IPED's "Fall 1990 Enrollment Summary by Racial/Ethnic Status."

Testimony - HB No. 407
Walter C. Fleming
page four

- * American Indian enrollment for the three community colleges in the System was only 3.8 % (or 45 students) of the total enrollment for 1987-88.
- * To achieve a minimum parity of 6 % enrollment, American Indian registration into the three community colleges in the System would have to increase from 45 students to 72 students.

We should not ignore nor underestimate the impact that the emergence of the tribally controlled community college movement will have on American Indian postsecondary enrollment in the future. Contemplate this factor:

- * American Indian enrollment at the seven tribal colleges in Montana is 1,689 or 62 % of the total postsecondary Indian enrollment.⁶

It is difficult, at best, to determine what increase in enrollment at the four-year System units can or will be attributable to the development of the tribal college movement. Anecdotal data suggests that approximately half of the tribal college graduates will transfer to four-year institutions. Thus, in Montana, the tribal colleges may conservatively contribute 50 students per year into the System institutions.

Conclusions

The profile presented herein speak of great potential. It is our hope that by the year 2000 the American Indian post-secondary enrollment will, at the least, double. This is possible.

We must, however, be prepared for this eventuality. The State's leaders of higher education, the Board of Regents, must be guided in its efforts to insure that its goals are achieved. Only through the inclusion of a Native American on the Board of Regents, can Montana fulfill its promise to uphold the integrity of our indigenous population. It is time to be proactive rather than reactive.

⁶ IPED's "Fall 1990 Enrollment Summary by Racial/Ethnic Status."

Ex. 2
3-18-91
HB 407

Testimony - HB No. 407
Walter C. Fleming
page five

The American Council on Education, in its report, One-Third of a Nation, accepts no less of a challenge than the elimination of "the gaps that mark our racial and ethnic minority population as disadvantaged."

The goal we suggest is simple but essential: That in 20 years, a similar examination [of the status of minority higher education achievement] will reveal that America's minority population has attained a quality of life as high as that of the white majority. No less a goal is acceptable. For if we fail, all American - not just minorities - will be the victims. But if we succeed, all Americans will reap the benefits.⁷

Montana cannot afford a lesser goal. I urge the Committee to report House Bill 407 out of committee with a "do pass" recommendation.

Thank you.

⁷ One-Third of a Nation, A Report of the Commission on Minority Participation in Education and American Life, American Council on Education and the Education Commission of the States, May 1988, p. 1.

Amendment to HB 470
Blue Copy

Prepared by Montana School Boards Association

1. Line 12:

Following: "EMPLOYEES"

Strike: remainder of Section 1 in its entirety.

Insert:

1. When school districts consolidate:

(a) a teacher who has tenure in the existing districts shall continue to have tenure if hired by the new district subject to the following:

(i) said teacher shall have a hiring preference for the first year with the new district for any position for which he or she is endorsed; and

(ii) if said teacher is hired by the new district, he or she shall have salary protection at the initial salary paid him or her by the new district.

(b) any other employee of the existing districts shall have a hiring preference for the first year with the new district for any comparable position for which he or she is qualified.

2. When a school district is annexed into another school district:

(a) a teacher who has tenure in the annexed district shall continue to have tenure if hired by the annexing district subject to the following:

(i) said teacher shall have a hiring preference for the first year for any vacant positions in the annexing district for which he or she is endorsed;

(ii) if said teacher is hired by the annexing district, he or she shall have salary protection at the initial salary paid him or her by the annexing district.

(b) any other employee of the annexed district shall have a hiring preference for the first year for any vacancy in a comparable position for which he or she is qualified.

SERVICE AGRICULTURE
EXHIBIT NO. # 4
DATE 3/18/91
BILL NO. AB 470

teacher who has not registered his certificate until the county superintendent does notify the district of such registration.

(2) A teacher or specialist employed by a joint district shall register his certificate with the county superintendent of the county in which he is working. A teacher or specialist employed by a special education cooperative shall register his certificate with the county superintendent of the county in which the special education cooperative is based.

History: En. 75-6106 by Sec. 87, Ch. 5, L. 1971; amd. Sec. 3, Ch. 277, L. 1977; R.C.M. 1947, 75-6106; amd. Sec. 15, Ch. 511, L. 1979; amd. Sec. 1, Ch. 330, L. 1987.

Cross-References

Duty of County Superintendent to register teacher or specialist certificates, 20-3-205.

20-4-203. Teacher tenure. (1) Whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher is considered to be reelected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with the teacher unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204.

(2) The tenure of a teacher with a district may not be impaired upon termination of services of the teacher if the following conditions exist:

(a) the tenure teacher is terminated because the financial condition of the district requires a reduction in the number of teachers employed; and

(b) continued employment rights are provided for in a collectively bargained contract of the district.

History: En. 75-6103 by Sec. 84, Ch. 5, L. 1971; amd. Sec. 1, Ch. 49, L. 1971; R.C.M. 1947, 75-6103; amd. Sec. 16, Ch. 511, L. 1979; amd. Sec. 1, Ch. 521, L. 1983; amd. Sec. 1, Ch. 479, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (2) providing tenure of teacher is not impaired upon termination of teacher's services if teacher terminated because district's financial condition requires reduction and if continued employment rights

are provided in collectively bargained contract; and made minor changes in form and phraseology.

Cross-References

Tenure of teachers employed by cooperatives, 20-7-456.

20-4-204. Termination of tenure teacher services. (1) (a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal;

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

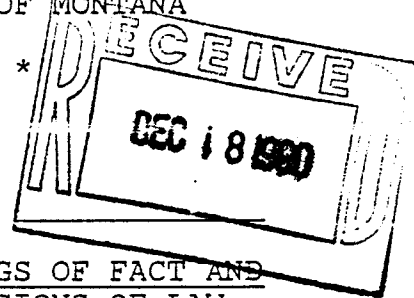
(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall, before May 1 of the current school fiscal year, notify the teacher of the recommendation for termination and of the teacher's right to a hearing on the recommendation. The notification must be delivered

Exhibit

BEFORE BILLIE J. FLEMING, COUNTY SUPERINTENDENT
OF SCHOOLS, PARK COUNTY, STATE OF MONTANA

	*	*	*	*	*	*	*
WILLIAM K. LONG,	*						
Petitioner,	*				No.		
v.	*						
SHIELDS VALLEY SCHOOL DISTRICT	*				<u>FINDINGS OF FACT AND</u>		
J12-5, BOARD OF TRUSTEES,	*				<u>CONCLUSIONS OF LAW</u>		
	*				<u>AND ORDER</u>		
Respondent.							



* * * * *

The above entitled matter was heard on October 25, 1990, before Billie J. Fleming, County Superintendent of Schools, Park County, Montana. Petitioner, William K. Long, appeared with his counsel, J. C. Weingartner. Respondent, Shields Valley School District, appeared with its counsel, Charles Erdmann.

This Hearings Officer conducted a hearing which produced a 126 page transcript. Evidence was received and a record was made on the matter pursuant to Section 10.6.118, ARM.

Following the hearing, the parties filed simultaneous briefs proposed findings of fact and conclusions of law, followed by simultaneous reply briefs. After reviewing the testimony, the record, and the proposed findings of fact and conclusions of law submitted by each party, and the written briefs, this County Superintendent hereby enters the following:

FINDINGS OF FACT

1. Petitioner, William K. Long, was a tenured teacher at the Clyde Park School District for the 1989-90 school year. Petitioner, and other members of the bargaining unit, were covered by a collective bargaining agreement at the Clyde Park School District.

2. Respondent, Shields Valley School District, is a political subdivision of the State of Montana, created and existing under the laws of the State of Montana, and operating schools in Wilsall and Clyde Park, Montana. In 1989 the Wilsall Elementary and High School Districts and the Clyde Park Elementary and High School Districts held elections pursuant to Section 20-6-203 and 20-6-315 to organize new elementary and high school districts. The voters approved the consolidation plan and the Shields Valley School District was created effective July 1, 1990.

3. On October 12, 1989, the Superintendent of the Clyde Park School District recommended that Petitioner (along with all other tenured teachers) be terminated at the end of the 1989-90 school year since the district would cease to exist at that time.

4. On October 12, 1989, the Chairman of the Clyde Park School District wrote a letter to Petitioner which provides as follows:

Dear Mr. Long:

You have been notified by Ed Barich, Superintendent of Clyde Park School District 41/38 & 2, that since Clyde Park School District 41/38 & 2 will no longer exist after June 30, 1990, he is recommending that all tenured teachers be notified that their teaching contracts will not be renewed for the 1990-91 school

year.

Attached to this letter is Section 20-4-204 of the School Laws of Montana which states that you have a right to request a hearing before the Clyde Park School Trustees on this recommendation within ten (10) days of receiving this notice. If you do not wish a hearing, you may waive your right to a hearing by signing the enclosed statement of waiver.

Sincerely,

Dennis Miller

5. On October 13, 1989, Petitioner signed a "Verification of Nonrenewal Notice" which provides as follows:

I verify that I have received notification that Ed Barich, Superintendent of Clyde Park School District 41/38 & 2 is recommending to the Clyde Park School Trustees that my contract not be renewed for the 1990-1991 school year because Clyde Park School District 41/38 & 2 will no longer exist after June 30, 1990.

6. On October 13, 1989, Petitioner also signed a "Statement of Waiver for a Hearing" which provides as follows:

I verify that I have received notification that Ed Barich, Superintendent of School District 41/38 & 2 is recommending to the Clyde Park School Trustees that my contract not be renewed for the 1990-1991 school year because Clyde Park School District 41/38 & 2 will no longer exist after June 30, 1990. I hereby waive my right to a hearing before the Clyde Park School Trustees.

7. On November 8, 1989, the School Board met to consider the recommendations of the Superintendent to terminate the District's tenured teachers. The minutes reflect that no teacher requested a hearing regarding their termination and that the Board took the following specific action pertaining to the Petitioner:

Superintendent Barich recommended that William Long not be rehired due to consolidation of schools. Bob Queen moved that William Long not be rehired for the 1990-91 school year. Tom Sarrazin seconded this motion . . . All members voted "yes" to these motions.

8. Petitioner did not appeal this action to the County Superintendent of Schools within thirty (30) days of the November 8, 1989 School Board meeting.

9. Petitioner, during the time he taught at Clyde Park high school, was a member of the Clyde Park Federation of Teachers, at one time serving as its President. Before becoming a teacher Petitioner had been employed by the Retail Clerks Association, serving two years as an international organizer and two years as a local shop steward. In addition, Petitioner was a union representative when he worked as a truck driver in the Berkeley Pit in Butte, Montana.

10. That Petitioner had a long history of union activities, was aware of his rights when he signed the statement of waiver, and was not coerced or forced into doing so in any manner.

11. On November 2, 1989, Petitioner applied for a position with the Shields Valley School District. On December 18, 1989, Petitioner received a letter of intent from the Shields Valley School District and was in fact hired for the 1990-91 school year.

12. On July 1, 1990, the Shields Valley School District came into existence and on July 2, 1990, the new district hired Petitioner as a nontenure teacher. On July 25, 1990, Petitioner filed this appeal with the Park County Superintendent of Schools.

13. Prior to the consolidation election in each school district, meetings were held with both members of the community and the teachers to inform them of the proposed consolidation. The Clyde Park teachers, including Petitioner, were informed at staff meetings prior to the election that their tenure would be lost if the consolidation plan became effective. Dr. Thibeault, a consultant hired by the school boards, stated at public meetings that teachers would lose their tenure.

14. While the Shields Valley School District was able to hire all tenured teachers who applied who had been previously employed by the Wilsall or Clyde Park School Districts, this occurred only because a number of tenured teachers from the two districts did not actively seek employment with the Shields Valley School District. The Shields Valley School District would not have been able to employ all of the tenured teachers who had been employed by the Wilsall and Clyde Park School Districts.

15. That while the Clyde Park school district was in sound financial condition at the time of consolidation, the trend in the district indicated that the district would suffer a loss of families and a loss of tax base in the future and that their financial condition could become precarious.

16. As a result of consolidation, several major changes took place: a) The district boundaries changed; b) the district was considered a new legal entity, obtained a new district number, and had to acquire a new tax identification number; c)

there were new members on the school board; d) some teaching assignments changed; e) the financial status of the new district is more secure; f) the salary schedule and benefits have changed; and g) better educational opportunities exist for its students.

17. That a collective bargaining agreement between the Clyde Park School District and its teacher's association existed at the time of the consolidation election and during the 1989-90 school year. That no grievance was ever filed pursuant to its terms over the loss of tenure rights or benefits, and no action was ever filed with the Board of Personnel Appeals over any alleged unfair labor practices.

18. That during the time the Clyde Park School Board made the recommendation to terminate the services of Petitioner, pursuant to Section 20-4-204, MCA, 1989, they followed the mandates of the statute and provided Petitioner with his rights to due process.

CONCLUSIONS OF LAW

1. This County Superintendent has jurisdiction to determine this matter pursuant to Section 20-3-210, MCA and Section 10.6.101, ARM.

2. Petitioner was properly terminated by the Clyde Park School Board on November 8, 1989, pursuant to Section 20-4-204, MCA, and he was afforded all due process protections due him.

3. Petitioner did not appeal the decision to terminate his tenure to the County Superintendent of Schools within (30)

Ex. 5
3-18-91
HB 470

days as provided for in Section 10.6.103(5)) A.R.M., and Section 20-4-204(5).

4. By not appealing the decision of the Clyde Park School Board to terminate his tenure, Petitioner's employment and tenure protection were severed as of June 30, 1990.

5. Petitioner was not misled or coerced into signing the "Statement of Waiver for a Hearing" on October 13, 1989, but did so knowing that his tenure protection would be eliminated.

6. Petitioner failed to comply with the requirements of Section 20-4-204, MCA, and Section 10.6.103(5) A.R.M., offered no reasons why he did not do so, and is not now entitled to challenge that termination.

7. That a hearing before the County Superintendent of Schools is not a proper forum to make determinations as to alleged unfair labor practices resulting from the termination of petitioner's tenure rights or loss of fringe benefits.

From the foregoing findings of fact and conclusions of law the County Superintendent now enters the following order:


ORDER

1. That William K. Long's tenure was properly terminated by the Clyde Park School District effective June 30, 1990.

2. As a result, Petitioner's tenure rights did not transfer to the newly created Shields Valley School District.

3. That Petitioner's status as a nontenured teacher with the Shields Valley School District is affirmed.

DATED this 17th day of December, 1990.

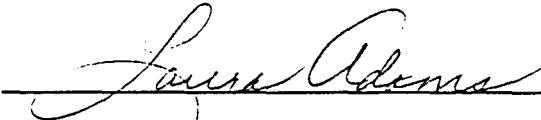

BILLIE J. FLEMING
County Superintendent of Schools

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing was mailed on the 17th day of December, 1990, addressed as follows:

Charles E. Erdmann
Erdmann Law Office
P. O. Box 5418
Helena, MT 59604

J. C. Weingartner
Attorney at Law
222 Broadway
Helena, MT 59601



EXPLANATORY COMMENT

In making the foregoing findings, conclusions and order in this case the hearings officer was aware of petitioner's position that the Clyde Park School District had no authority to terminate petitioner simply because of consolidation. Based on the circumstances of this case, however, it was my opinion that it was not necessary to address that issue.

The petitioner was a man with many years of experience in union activities, both in the private sector and as President and as a member of the bargaining unit of the Clyde Park Federation of Teachers. He was properly notified of the recommendation of Mr. Barish and his rights under Section 20-4-204, MCA, 1989. Whatever his motivations may have been, he made a rational decision and knowingly signed a "Statement of Waiver for a Hearing" on October 13, 1989, and was formally terminated on November 8, 1989. His own testimony indicates that his decision was not based on any coercion or undue influence. It further indicates that he knew the effects of the board's decision on November 8.

Petitioner offered no reasons why he waited until July 25, 1990, to file his appeal and none are evident from the transcript. Pursuant to Section 20-4-204 and Section 10.6.103(5) a school controversy case shall be commenced within (30) days after the final decision of the governing authority of the school district is made. This appeal is over seven months late. Since petitioner did not file a timely notice of appeal his tenure

rights were effectively terminated as of June 30, 1990.

Therefore, none existed nor were they transferred to the new district at the time the appeal was filed.

Having failed to diligently pursue his legal and administrative rights petitioner is precluded from challenging his termination at this time. Keller v. School District No. 5, 774 P.2d 409 (Mont. 1989); Schweigert v. Trustees, 163 Mont. 29, 515 P.2d 85 (1973). The time limits set by law are designed to provide for prompt resolution of conflicts such as this. Prompt resolution is in the best interests of all concerned. For example, if petitioner had promptly filed his appeal and had prevailed, the new district would have had time to adjust their budgets and schedules to comply. Now, budgets have been set and it would be difficult for the district to juggle funds and schedules in "mid-stream."

I found, after a review of the transcript and exhibits, that the teachers of the Wilsall and Clyde Park School Districts were informed before the vote on consolidation that tenure would be terminated. Both Mr. Franks and Mr. Barish were sure that that issue was discussed not only amongst themselves but at the staff meetings that were held prior to the consolidation election. Petitioner said that he does not recall if it was or not. Mr. Franks also recalls that tenure was discussed at the public hearings. This fact makes the delay in filing an appeal even more aggravating.

Petitioner had notice of what his rights were and the opportunity to exercise them. He did not do so in a timely manner and therefore lost his right to challenge the board's decision to terminate his employment and, along with that, any tenure rights and protections that he had.

While I did not decide on the "consolidation" issue, if I had reached that issue I would also have decided against petitioner. I found no statutory or other authority which prohibited termination based on the fact that a school district would cease to exist because it was consolidating with another district. Further, I found no statutory authority which mandated that the new district assume the tenure and salary obligations of the old districts. In fact, Section 20-4-203 clearly indicates that tenure applies only to a specific district. In this case it is clear that a new district was formed and Section 20-4-203 would not apply.

It also appears to this hearings officer that consolidation among smaller districts is a process to be encouraged. Consolidation will generally add to the financial stability of districts and enable them to provide enhanced educational opportunities for their students. Contrary to petitioner's position, I believe that any time that occurs it constitutes a major, positive change. It would be unwise to discourage consolidation by placing impediments in the way unless those impediments are clearly dictated by statute.

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Ex. 5
3/18/91
HB 470

NOTICE OF APPEAL

Either party may appeal the decision of the County Superintendent to the State Superintendent of Public Instruction by sending a notice of appeal to the Superintendent within a timely filing date.

A copy of the notice of appeal shall be sent to the Park-County Superintendent of Schools, Billie J. Fleming along with other parties of the controversy. The notice of appeal shall contain the following information:

(a) a caption setting forth the name of the state superintendent of public instruction;

(b) the names and addresses of all appropriate parties;

(c) a clear and concise statement of the matters asserted on appeal;

(d) a statement indicating that appellant has a contested case identifying the county superintendent from which the appeal is taken and whether the state superintendent has proper jurisdiction;

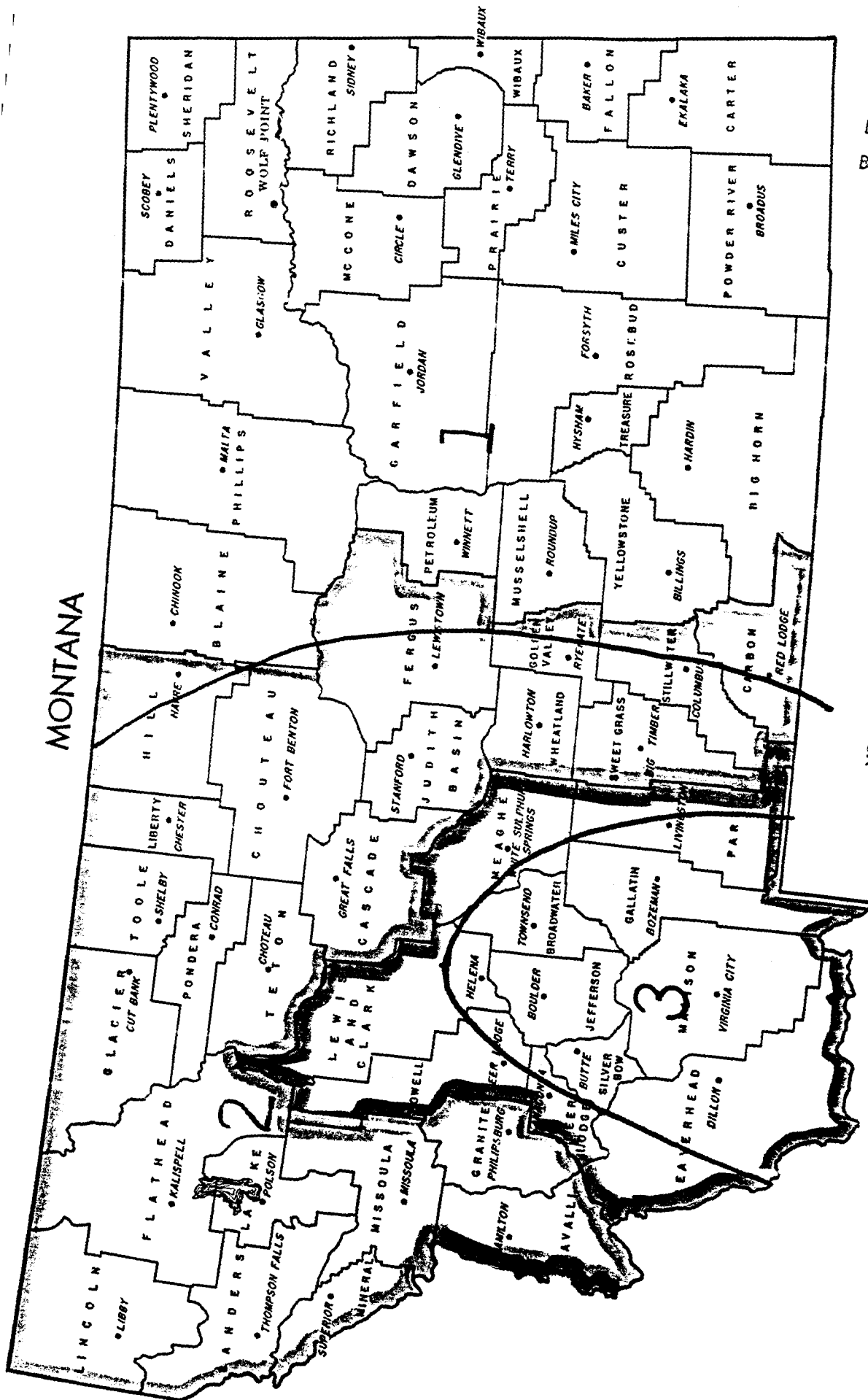
(e) references to the particular sections of the statutes and rules involved;

(f) the signature of the Petitioner and/or his/her attorney;

(g) a copy of the findings of facts, conclusions of law, and order of the county superintendent.

Appeal Procedures as cited in Sections 10-6-122 and 10-6-123 A.R.M.

MONTANA



SENATE AGRICULTURE
EXHIBIT NO. # 6
DATE 3/18/91
BILL NO. HB 665

MONTANA SEISMIC RISK ZONES

- ZONE 1 - Minor damage.
- ZONE 2 - Moderate damage.
- ZONE 3 - Major damage.

3-18-91

Education

VISITORS' REGISTER

[illegible]